



DONALD L. WOLFE, Director

COUNTY OF LOS ANGELES

DEPARTMENT OF PUBLIC WORKS

"To Enrich Lives Through Effective and Caring Service"

900 SOUTH FREMONT AVENUE
ALHAMBRA, CALIFORNIA 91803-1331
Telephone: (626) 458-5100
www.ladpw.org

ADDRESS ALL CORRESPONDENCE TO:
P.O. BOX 1460
ALHAMBRA, CALIFORNIA 91802-1460

December 12, 2006

IN REPLY PLEASE
REFER TO FILE: PD-5

The Honorable Board of Supervisors
County of Los Angeles
383 Kenneth Hahn Hall of Administration
500 West Temple Street
Los Angeles, CA 90012

Dear Supervisors:

**FEDERAL JOB ACCESS AND REVERSE COMMUTE GRANT
LOS ANGELES COUNTY METROPOLITAN TRANSPORTATION AUTHORITY
SUPERVISORIAL DISTRICTS 1 AND 4
3 VOTES**

IT IS RECOMMENDED THAT YOUR BOARD:

1. Accept up to a maximum of \$208,770 in Federal Job Access and Reverse Commute (JARC) grant funds from the Los Angeles County Metropolitan Transportation Authority (Metro) as the pass-through agency for the Federal Transit Administration (FTA). This grant will partially fund expansion of the operating hours of the South Whittier Shuttle.
2. Authorize the Director of Public Works, or his designee, to act as an agent for the County of Los Angeles when conducting business with Metro and the FTA on any and all matters related to this grant, including negotiating and executing a Memorandum of Understanding (MOU) with Metro substantially similar to the enclosed MOU and any amendments, certifications, and requests for reimbursement on behalf of the County.

PURPOSE/JUSTIFICATION OF RECOMMENDED ACTION

The purpose of this action is to accept up to a maximum of \$208,770 in grant funds from Metro under the Federal JARC grant program. This action also delegates authority to the Director of Public Works, or his designee, to execute an MOU, substantially similar to the enclosed MOU, with Metro for receipt of these funds.

The South Whittier Shuttle serves the unincorporated area of South Whittier. This route is approximately 12 miles long and enables residents to travel to Whittwood Town Center, Presbyterian Hospital, and Sorensen Park in the Los Nietos area as well as to job training and employment locations within the vicinity. The current operation hours are Monday through Friday from 8 a.m. to 6 p.m., and on Saturday from 9 a.m. to 5 p.m. The expanded schedule will be Monday through Friday, from 6 a.m. to 8 p.m., and on Saturday from 8 a.m. to 6 p.m.

The JARC grant was intended to fund 50 percent of the cost of the South Whittier Shuttle expanded service hours for two years. The expanded service schedule will be implemented in November 2006. The project will not be eligible for reimbursement under the JARC grant until the MOU is fully executed and the expanded service schedule is implemented. In addition, the FTA's JARC grant Agreement with Metro requires that all expenditures must occur by September 2007. Metro is willing to support a request to the FTA for an extension of the expenditure deadline to fall 2008. If the extension is denied by the FTA, the grant will only fund 50 percent of the costs from the date the project becomes eligible for reimbursement through September 2007.

After the expiration of the JARC funding, the extended hours will be funded out of the First and Fourth Supervisorial Districts' allocation of Proposition A Local Return Transit funds unless there is insufficient usage to justify the extra hours. If there is insufficient usage, we propose to revert to the original schedule subject to the First and Fourth Supervisorial Districts' approval.

Implementation of Strategic Plan Goals

This action is consistent with the County Strategic Plan Goals of Fiscal Responsibility and Service Excellence by actively seeking grant funds to augment the County's funding sources and improves County transit services for the public.

FISCAL IMPACT/FINANCING

The cost for the South Whittier Shuttle's expanded hours of operation is estimated to be \$417,540 for two years. Following are the Transit Enterprise Fund budget requirements for Fiscal Years 2006-07, 2007-08, and 2008-09 reflecting the receipt of grant funds for the full two-year period:

	Budget for Service Expansion	Grant Reimbursement	SD 1 - 25 percent	SD 4 - 75 percent
FY 06-07	\$ 156,600	\$ 78,300	\$ 19,580	\$ 58,720
FY 07-08	\$ 208,770	\$ 104,390	\$ 26,100	\$ 78,280
FY 08-09	\$ 52,170	\$ 26,080	\$ 6,520	\$ 19,570

If the grant term is not extended beyond September 2007, the Transit Enterprise Fund budget requirements will be as follows:

	Budget for Service Expansion	Grant Reimbursement	SD 1 - 25 percent	SD 4 - 75 percent
FY 06-07	\$ 156,600	\$ 78,300	\$ 19,570	\$ 58,730
FY 07-08	\$ 208,770	\$ 17,400	\$ 47,840	\$ 143,530
FY 08-09	\$ 52,170	\$ -	\$ 13,040	\$ 39,130

There will be no impact to the County's General Fund. Sufficient funding to finance this service for Fiscal Year 2006-07 is included in the 2006-07 Transit Enterprise Fund. Funding for future years will be included in the 2007-08 and 2008-09 budget requests.

FACTS AND PROVISIONS/LEGAL REQUIREMENTS

On July 11, 2000, your Board approved guidelines to be followed in the acceptance of any grant of \$100,000 or more. These guidelines include a requirement that the County departments prepare a Grant Management Statement for your review prior to carrying out the activities covered under the grant. Accordingly, the Grant Management Statement for this grant is enclosed for your review.

A copy of Metro's proposed MOU is enclosed and has been approved as to form by County Counsel. The final MOU will be approved as to form by County Counsel prior to execution by the Director, or his designee.

The Honorable Board of Supervisors
December 12, 2006
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ENVIRONMENTAL DOCUMENTATION

On December 20, 2005, your Board found the South Whittier Shuttle Service to be statutorily exempt from the California Environmental Quality Act pursuant to Public Resources Code 21080 (b) (10).

IMPACT ON CURRENT SERVICES (OR PROJECTS)

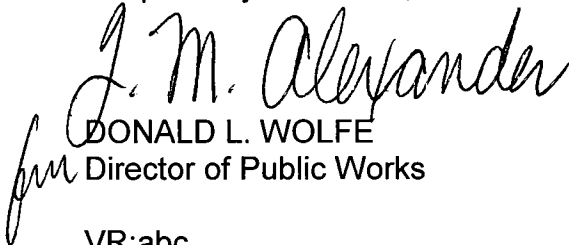
The grant will enable Public Works to extend service hours for the South Whittier Shuttle. The current operation hours are Monday through Friday from 8 a.m. to 6 p.m., and on Saturday from 9 a.m. to 5 p.m. The expanded schedule will be Monday through Friday from 6 a.m. to 8 p.m., and on Saturday from 8 a.m. to 6 p.m.

There is no impact on other current services.

CONCLUSION

Upon approval, please return three adopted copies of this letter to Public Works.

Respectfully submitted,


DONALD L. WOLFE
Director of Public Works

VR:abc

C070339

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Enc. 2

cc: Chief Administrative Office
County Counsel

**JOB ACCESS AND REVERSE COMMUTE (JARC)
MEMORANDUM OF UNDERSTANDING**

This Memorandum of Understanding (MOU) is entered into between the Los Angeles County Metropolitan Transportation Authority ("MTA") and Los Angeles County Department of Public Works (the "Agency") on this date of November 30, 2005 for South Whittier Shuttle Expansion (the "Project").

WHEREAS, the MTA Board of Directors, at its January 22, 2004 meeting, approved the staff recommended Job Access and Reverse Commute (JARC) projects and authorized the MTA's Chief Executive Officer to submit a JARC grant application to and enter into a grant with the Federal Transit Administration (FTA) as a pass-through agency for the proposed projects (the "Federal Grant"). The MTA Board also authorized the MTA's Chief Executive Officer to negotiate and execute JARC memorandum of understanding for pass-through funding with the various project sponsors after the FTA awards the grant, and;

WHEREAS, The total cost for the Project described on the Scope of Work attached as Attachment "A" hereto is estimated to be \$417,540("Estimated Cost").

WHEREAS, The Agency has agreed to provide the required Local match ("Match") and any additional funding required to complete the Project.

WHEREAS, MTA shall pass along the FTA funds for the Project and assumes no responsibility for the funding of any portion of the Project.

WHEREAS, The Agency understands Federal Funds provided herein are contingent upon the FTA's approval of the grant application and are subject to the federal lapsing policy.

WHEREAS, The parties desire to execute this Agreement to authorize MTA to pass along the Federal Funds to Agency under the terms and conditions contained herein.

NOW THEREFORE, the parties hereby agree as follows:

1. CONDITIONS

- 1.1 The Agency shall use the Funds, as described below, to complete the Project as described in the Scope of Work in Attachment A. The Funds, as granted under this MOU, can only be used towards the completion of this Scope of Work. The Agency shall not use the Funds to substitute for any other funds or projects not specified in this MOU. The Scope of Work includes a description of the Project's location, a detailed Project description, specific description of the Project line item budget, and schedule of work.

MOUPT001001

- 1.2 The Agency shall use the Funds in accordance with the Program Budget attached to this MOU as Attachment B. The Budget shows the Project's entire financial commitment including the Agency's Funding Commitment (Local Match) as well as the fiscal year and month that the Funds will be expended.
- 1.3 The Agency understands the Funds are federal funds and FTA and DOL requirements apply to the use of Funds. All FTA and DOL requirements and guidelines as summarized in the FTA Master Agreement are incorporated by reference herein as part of this Agreement. Circular 4220.1 E is attached as Attachment C. These requirements include, but are not limited to:
 - (a) assurances of legal authority.
 - (b) certification of non-debarment, suspension or termination.
 - (c) certification of a drug-free workplace.
 - (d) intergovernmental review.
 - (e) Civil Rights review, including Title VI Program review.
 - (f) Disadvantaged Business Enterprise (DBE) assurances.
 - (g) Disability nondiscrimination (ADA).
 - (h) Office of Management and Budget (OMB) certification.
 - (i) Lobbying certifications.
 - (j) Buy America requirements.
 - (k) NEPA environmental review.
 - (l) Single audit requirements.
 - (m) Circular 9300.1A (Section 5309).
 - (n) Circular 5010.1 C (Grants Management).
 - (o) Circular 4220.1 E (Third-Party Contracting)
 - (p) Section 5333(b) of the Federal Transit Statute
- 1.4 During the term of this MOU, the Agency agrees to contribute at least the statutorily or other required local contribution of matching funds (other than federal funds), if any is specified within this Agreement or any attachments hereto, toward the actual costs of the Project.
- 1.5 Not more frequently than once a month, but at least quarterly, the Agency will prepare and submit to the MTA a certified Request for Reimbursement for actual allowable Project costs incurred and paid for by the Agency consistent with the Scope of Work document. Advance payments by the MTA are not allowed.
- 1.6 If applicable, the first Request for Reimbursement shall also be accompanied by a report describing any tasks specified in the Scope of Work document which were accomplished prior to the effective date of this Agreement, which costs could be credited toward the required local contribution described herein provided that MTA has received prior federal approval for such expenditures.

MOUPT001001

- 1.7 If any amounts paid to the Agency are disallowed or not reimbursed by the FTA for any reason, the Agency shall remit to MTA the disallowed or non-reimbursed amount(s) within 30 days from receipt of MTA's notice. All payments made by MTA hereunder are subject to the audit provisions contained herein and within the Federal Grant.
- 1.8 This is a one time only grant subject to the terms and conditions agreed to herein. This grant does not imply nor obligate any future funding commitment on the part of MTA.
- 1.9 The term of this Agreement shall commence upon the date first referenced above, and shall terminate upon termination of the Federal Grant, unless terminated earlier as provided herein. The last expenditure date under this Agreement is three years after the FTA grant award date.
- 1.10 The Agency shall be subject to and shall comply with all applicable requirements of the MTA, FTA and DOL regarding Project reporting and audit requirements. The Agency shall use the MOU number MOU.PT001001 on all correspondence.
- 1.11 The Agency shall submit the following Reports and Certifications to the MTA for the duration of the Project:
 - Quarterly Narrative and Financial Report on Project Progress and any other Job Access and Reverse Commute Reports as requested.
- 1.12 Unless written notification is otherwise provided by MTA, the effective date and start date of reimbursable activities is the FTA grant award date. Actual reimbursement of eligible work cannot occur until the MTA and the Agency execute this agreement and the MTA has entered into the Federal Grant agreement.

2. TRANSFER OF FUNDS

- 2.1 To the extent that MTA receives funds under the Federal Grant for the Project, the MTA shall reimburse the Agency for its eligible expenses up to the maximum amount of \$208,770 (the "Funds") for the Project subject to the terms and conditions contained herein.
- 2.2 MTA shall transfer the Funds to the Agency on reimbursement basis only. No advance of Funds shall be allowed. The Agency shall submit monthly invoices with supporting documentation to the MTA identifying work completed and the amount expended by the Agency. Items eligible for reimbursement are discussed in the Project Budget as Attachment B.
- 2.3 Each Request for Reimbursement will report the total of Project expenditures and will specify the percent and amount of Funds to be reimbursed. The Request for Reimbursement shall be accompanied by a report describing the overall work status and progress on Project tasks.

MOUPT001001

- 2.4 The MTA shall reimburse the Agency the allowed amount of the invoice as approved by the MTA and in accordance with this MOU.
- 2.5 The Agency is responsible for all costs in excess of the Funds incurred as a result of this Project. Under no circumstances will the total amount of money that the MTA reimburses the Agency exceed the amount of the Funds.
- 2.6 Agency administration direct costs may be invoiced for up to 10% of the actual grant-eligible project costs
- 2.7 MTA shall not be responsible to provide any funding to substitute for the Federal Grant Funds in the event the Grant is withdrawn, recalled or not appropriated for any reason. In the event the Grant is closed, the Agency will reimburse MTA any Funds paid that were no longer available in the FTA grant award.
- 2.8 The MTA will retain 10% of the invoice amount until the MTA has evaluated the Agency's performance and made a determination that all contract requirements under this Agreement have been satisfactorily fulfilled
- 2.9 Invoices to the MTA shall be addressed to:
- Los Angeles County Metropolitan Authority, Accounts Payable
P.O. Box 512296
Los Angeles, CA 90051-0296
- 2.10 Reports and notices to MTA shall be addressed to:
- Los Angeles County Metropolitan Transportation Authority
One Gateway Plaza
Los Angeles, CA 90012
Attn: Armineh Saint, MS: 99-23-03
- 2.11 Payments and notices to the Agency shall be addressed to:
- Los Angeles County Department of Public Works
Programs Development Division
900 S. Fremont Avenue
Alhambra, CA 91803-1331
Attn : John Huang

3. PENALTIES

The MTA reserves the right to terminate this MOU and withhold all payments of Funds in the event of Agency's breach or default of any term or condition contained in this MOU.

4. MISCELLANEOUS

- 4.1 California law shall govern this MOU. If any provision of this MOU is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions shall nevertheless continue in full force without being impaired or invalidated in any way; unless any of the stated purposes of the MOU would be defeated.
- 4.2 The Agency shall not assign this MOU, or any part thereof, without written consent and prior approval of the MTA Chief Executive Officer or designee, and any assignment without said consent shall be void and unenforceable.
- 4.3 This MOU and FTA DOL Guidelines constitute the entire understanding between parties, with respect subject matter herein. This MOU shall not be amended, nor any provision or breach hereof waived except in writing signed by the parties.
- 4.4 The covenants and agreements of this MOU shall inure to the benefit of, and shall be binding upon, each of the parties and their respective successors and assigns.
- 4.5 MTA and the FTA shall have the right to conduct a financial and compliance audit(s) of the Project. Agency agrees to establish and maintain proper accounting procedures and cash management records and documents in accordance with generally accepted accounting principals. The Agency shall reimburse MTA for any expenditure not in compliance with the Scope of Work and/or not in compliance with other terms and conditions of this MOU and FTA Guidelines.
- 4.6 The Agency shall obtain the services of an independent auditor to conduct a single audit of the Project each year in conformance with the provisions of OMB Circular A-133. The Agency shall submit a copy of each single audit to the MTA within 30 days of its completion.
- 4.7 Neither the MTA nor any officer or employee thereof shall be responsible for any damage or liability occurring with any work performed by and or service provided by Agency, its officers, agents employees, and subcontractors under this MOU. Agency shall fully identify, defend and hold the MTA, and its officers, agents and employees harmless from and against any liability and expenses, including without limitation, defense costs, any costs or liability on account of bodily injury, death or personal injury of any person for damage to or loss of risk of property, any environmental obligation, any legal fees and any claims for damages of any nature whatsoever arising of the Project, including, without limitations, (i) misuse of the Funds by Agency, or its officers, agents, employees, or subcontractors; (ii) breach of the Agency's obligations under this MOU; or (iii) any act or omission of the Agency, or its officers, agents, employees or subcontractors in the performance of the work or the provision of the services, included, without limitation, the Scope of Work, described in this MOU.

MOUPT001001

- 4.8 Agency in the performance of the work required by this MOU is an independent contractor and not an agent or employee of the MTA. Agency shall not represent itself as an agent or employee of the MTA and shall have no powers to bind the MTA in contract or otherwise.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives as of the dates indicated below:

MTA:

LOS ANGELES COUNTY METROPOLITAN TRANSPORTATION AUTHORITY

By: _____
Roger Snoble Date
Chief Executive Officer

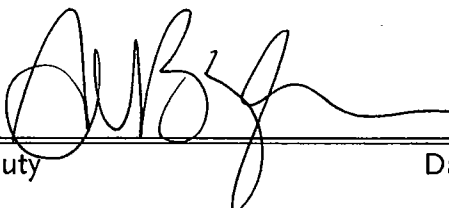
GRANTEE:

COUNTY OF LOS ANGELES, DEPARTMENT OF PUBLIC WORKS

By: _____
Donald L. Wolfe Date
Director of Public Works

APPROVED AS TO FORM:

Raymond G. Fortner, Jr.
County Counsel

By:  2-9-06
Deputy Date

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South Whittier Shuttle Expansion

Description of the Project:

Currently, the Department of Public Works is in the process of developing a wheelchair-accessible shuttle service in the South Whittier area. Funding will be provided through Proposition A Local Return funds for the shuttle to operate between 8 a.m. and 6 p.m. on weekdays, on a 40-minute frequency. The shuttle will connect the unincorporated areas of South Whittier to Whittwood Mall and Presbyterian Hospital. This service will be implemented in January 2006. The shuttle will charge 25 cents per passenger.

According to the 2000 census, 12.2% of the residents in the South Whittier area are low income, and 37.2% of residents live in households with income below the Los Angeles County Community Development Commission low-to-moderate income levels. In addition, 15% of residents in the South Whittier area are disabled. Within Los Angeles County, 17.9% of residents are low-income, 44.7% of residents are low-to-moderate income, and 18.2% are disabled. In order to further serve the needs of the population, we are proposing to expand both the route and the operating hours of the planned service if this grant is awarded.

The operating hours for the shuttle will be expanded by four hours on weekdays; therefore, service will be provided from 6 a.m. to 8 p.m. rather than from 8 a.m. to 6 p.m. The shuttle will also run on Saturdays between 8 a.m. and 6 p.m. The route will be extended from Presbyterian Hospital to Uptown Whittier and Whittier College, a distance of approximately one mile. Both the expanded operating hours and the one mile extension will be implemented by July 2006. This expansion will close a gap identified in Section 5.1 of the Supplemental Southeast Area Bus Restructuring Study conducted by our consultant, Dan Boyle & Associates.

Currently, there is no transit route connecting the unique destinations to be served by the shuttle. Los Angeles County administers a paratransit service for senior and disabled residents in South Whittier. According to our consultant, the only means of transportation utilized by the low-income community include informal carpools and rides provided by friends and relatives. This shuttle will provide transportation to training and job locations as well as connections to regional transit. The low-income residents in South Whittier are the targeted group for this service.

The South Whittier Shuttle will serve many major destinations of interest to CalWORKS recipients, including a local business district, malls, and schools. Specific locations are the Whittwood Mall, Santa Fe Springs Mall, and Santa Fe Springs Plaza. The one-mile extension of the South Whittier Shuttle route will add the area of Uptown Whittier, which is another source of entry level jobs. The shuttle will enable residents to attend the

Attachment A

Whittier Union High School District's adult school, which provides training for skilled work. Residents will also be able to apply for entry level positions and obtain medical treatment at Presbyterian and Whittier Hospitals. In addition, connections will be provided to regional transit services at Uptown Whittier and at Whittwood Mall, thereby enabling residents to travel further to reach additional training and employment within the region.

Dan Boyle & Associates worked closely with various social service agencies, employers, cities, and the Metro. The study was developed with input from the Los Angeles County Department of Public Social Services (DPSS) and the Southeast Area Social Services Funding Authority (SASSFA). The project conforms with the DPSS Welfare to Work Transportation Plan approved by the Board of Supervisors in 2001. DPSS has given their support to the project. The Plan identifies Southeast Los Angeles County as an area where both transit and job accessibility are low. The expanded service will help meet the needs of people going to training and job locations. By linking Cal-WORKS recipients to these destinations, the proposed service will promote self-sufficiency. When the grant funding ends, Public Works will use Proposition A revenue to continue the service as demand warrants.

PROJECT LOCATION & LIMITS OR SERVICE AREA-The proposed South Whittier Shuttle will include the unincorporated area of South Whittier and portions of the cities of Santa Fe Springs and Whittier. The currently proposed route is approximately 7.6 miles. The expanded portion of the proposed route, which would be funded by this grant, is approximately one mile.

PROJECT MANAGEMENT-The South Whittier Shuttle will be operated by a service procured through a contractor with Public Works. The contractor will provide the vehicles for the service and employ the drivers. The contract will be administered by the Public Works Project Coordinator, who will enforce the terms of the contract and ensure a high quality of service for all patrons. In addition, consultants may be utilized from time to time to provide additional support.

PROJECT MONITORING AND TRACKING SYSTEM The contract for the South Whittier Shuttle Service will have several provisions to ensure service quality. These include measures such as on-time performance, number of complaints, and preventative maintenance enforcement. Public Works will require the contractor to submit a weekly report on the mechanical condition and operational status of the vehicles. Monitoring will be performed on the route by Public Works staff. If the contractor does not meet the standards of the contract, liquidated damages will be assessed and follow up monitoring will be conducted to ensure that performance meets all standards stipulated in the contract. Ridership data will be collected on a monthly basis by the contractor and analyzed to determine the efficiency and cost-effectiveness of the service by Public Works. Any changes to the service will be made with input from stakeholders.

SOUTH WHITTIER SHUTTLE EXPANSION						
First Year Budget	Cost/unit	Units	Local Share	Federal Funds	Total Cost	
Capital Costs						
Signage (purchase and installation)	\$100.00	12	\$600	\$600	\$1,200	
Operating Costs						
Shuttle Contract (based on number of hours of expanded service)*	\$60.00	3,120	\$93,600	\$93,600	\$187,200	
Marketing material (brochures with schedules)	\$0.02	15,000	\$150	\$150	\$300	
Postage for marketing (number of meter impressions)	\$0.35	12,000	\$2,100	\$2,100	\$4,200	
Project Administration (10% of contract cost)			\$9,360	\$9,360	\$18,720	
First Year Subtotal			\$105,810	\$105,810	\$211,620	
Second Year Budget						
Operating Costs						
Shuttle Contract (based on number of hours of expanded service)*	\$60.00	3,120	\$93,600	\$93,600	\$187,200	
Project Administration (10% of contract cost)			\$9,360	\$9,360	\$18,720	
Second Year Subtotal			\$102,960	\$102,960	\$205,920	
Total Project Costs			\$208,770	\$208,770	\$417,540	
* - Expanded service hours: 2 vehicles per service hour 6 a.m. - 8 a.m. and 6 p.m. - 8 p.m. weekdays 8 a.m. - 6 p.m. Saturday 60 vehicle hours per week 52 weeks a year						

PROJECT FINANCIAL PLAN:

TOTAL PROJECT EXPENSES AND FUNDING REQUEST

The cost of the shuttle extension and service hour expansion is \$211,620 in the first year, and \$205,920 for the second year. We are requesting \$105,810 of federal funds or 50% of the project cost for the first year and \$102,960 in federal funds for the second year.

The total project cost is \$417, 540. The total local share is \$208, 770. We are requesting \$208,770 of federal funds.

EXTENDED BUDGET DESCRIPTIONS

Capital Costs

No capital costs are required for the vehicles because they will be provided with the existing fleet for the proposed South Whittier shuttle.

Signs for Service: \$1,200

Twelve additional signs will be purchased for the shuttle to advertise the route extension and designate pick up and drop off locations.

Operating Costs

Shuttle contract (two vehicles): \$187,200

The shuttle contract cost is estimated at \$60/hour, based on past contracts executed by Public Works.

Total Cost for Marketing Materials: \$300

This includes the cost of development and printing of 15,000 brochures in English and Spanish, for 10,000 households. The materials will also be distributed to businesses, community centers, and civic facilities.

Total Cost for Postage: \$4,200


This is the cost for a bulk mail permit to mail information brochures to all residences and major businesses in the South Whittier shuttle service area. To ensure that schedules will be sent on an as-needed basis to interested persons, eleven thousand stamps will be needed.

Project Administration: \$18,720

This includes contracted service management, monitoring, and reporting. It does not exceed 10% of the project cost per FTA regulations.

LOCAL MATCH REQUIREMENT

The local match will be provided by Proposition A Local Return funds.

 FEDERAL TRANSIT ADMINISTRATION	ABOUT FTA	SITE MAP	SEARCH
→ 4200 - PROCUREMENT			
Home / Government / Federal / Circulars / Circulars / 4200 - Procurement			

Third Party Contracting Requirements

Number C 4220.1E
06-19-03

U.S. Department
of Transportation
**Federal Transit
Administration**

In addition to the Circular, there is a fully annotated version of the Circular that explains FTA's interpretations of the various provisions of the Circular and is regularly updated to reflect changes in procurement practices. Get this annotated (footnoted) version: [\[HTML\]](#) [\[Word\]](#).

1. PURPOSE. This circular sets forth the requirements a grantee must adhere to in the solicitation, award and administration of its third party contracts. These requirements are based on the common grant rules, Federal statutes, Executive orders and their implementing regulations, and FTA policy.

2. CANCELLATION. This circular cancels FTA Circular 4220.1D "Third Party Contracting Requirements," dated 4-15-96.

3. REFERENCES.

- a. Federal Transit Laws, 49 U.S.C. Chapter 53.
- b. Transportation Equity Act for the 21st Century 1998 (TEA-21), P.L. 105-178 as amended, TEA-21 Restoration Act 1998, P.L. 105-206.
- c. Sections 4001 and 1555 of the Federal Acquisition Streamlining Act of 1994, 41 U.S.C. § 403(11) and 40 U.S.C. § 481(b), respectively,
- d. 49 C.F.R. part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.
- e. 49 C.F.R. part 19, Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations.
- f. Executive Order 12612, "Federalism," dated 10-26-87.
- g. FTA Circular 5010.1C, "Grant Management Guidelines," dated 10-1-98.
- h. FTA Master Agreement [\[PDF\]](#).

FROM THE
ADMINISTRATOR

NEWS & EVENTS

SAFETY & SECURITY

STRATEGIC BUSINESS
PLAN

GRANT PROGRAMS

RESEARCH & TECHNICAL
ASSISTANCE

GOVERNMENT & LEGAL

TRANSIT DATA & INFO

i. Appendix D, Best Practices Procurement Manual.

4. **APPLICABILITY.** This circular applies to all FTA grantees and subgrantees that contract with outside sources under FTA assistance programs. FTA grant recipients who utilize FTA formula funds for operating assistance are required to follow the requirements of this circular for all operating contracts. These requirements do not apply to procurements undertaken in support of capital projects completely accomplished without FTA funds or to those operating and planning contracts awarded by grantees that do not receive FTA operating and planning assistance.

Congestion Mitigation and Air Quality (CMAQ) and Job Access/Reverse Commute (JARC) project funds may be used for operations. Although grantees must follow circular requirements for any specific contracts that utilize CMAQ or JARC funds, the use of CMAQ and JARC funds for operations does not trigger the applicability of the circular to all other operating contracts.

Grantees who utilize formula capital funds for preventive maintenance contracts are subject to the following requirements of the circular: If FTA formula capital funds are fully allocated to discrete preventive maintenance contracts, then the requirements of this circular will apply only to those discrete contracts and must be identified and tracked by the grantee. If the FTA formula funds are not allocated to discrete contracts then all preventive maintenance contracts are subject to the requirements of the circular.

a. States. When procuring property and services under a grant, a State will follow the same procurement policies and procedures that it uses for acquisitions that are not paid for with Federal funds. States must, at a minimum, comply with the requirements of paragraphs 7m, 8a and b, and 9e of this circular and ensure that every purchase order and contract executed by it using Federal funds includes all clauses required by Federal statutes and executive orders and their implementing regulations.

b. All Other Recipients. Subgrantees of states and all other FTA grantees (to include regional transit authorities) will administer contracts in accordance with this circular.

5. **POLICY.** FTA's role in grantee procurements is reflective of Executive Order 12612, Federalism. The executive order directs Federal agencies to refrain from substituting their judgment for that of their recipients unless the matter is primarily a Federal concern and to defer, to the maximum extent feasible, to the States to establish standards rather than setting national standards.

In 1996, FTA reduced its role in grantee third party procurement activity in several important respects. To ensure compliance with Federal procurement requirements, FTA will continue to provide guidance and technical assistance to its grantees consistent with its Federal oversight responsibilities.

a. Grantee Self-Certification. Recognizing that most FTA grantees have experience with the third party contracting requirements of the "common grant rules" (49 C.F.R. parts 18 and 19), FTA will rely primarily on grantees' "self-certifications" that their procurement system meets FTA requirements and that a grantee has the technical capacity to comply with Federal procurement requirements. All grantees must "self certify" as part of the Annual Certification/Assurance Process.

FTA will monitor compliance with this circular as part of its routine oversight responsibilities. If FTA becomes aware of circumstances that might invalidate a grantee's self-certification, FTA will investigate and recommend appropriate

measures to correct whatever deficiency may exist.

b. FTA Review of Third Party Contracts. FTA relies on the validity of each grantee's self-certification rather than on a pre-award review of third party contracts. Accordingly, FTA will rely on periodic, post-grant reviews to ensure that grantees comply with Federal requirements and standards. Grantees are still free to request FTA's pre-award review of their procurements as part of FTA's technical assistance program. Conversely, if FTA requests to review the record of a particular procurement, grantees must make their procurement documents available for FTA's pre-award (or post-award) review.

c. Procurement System Reviews. FTA is required by 49 U.S.C. §5307 to perform reviews and evaluations of grant programs and to perform a full review and evaluation of the performance of grantees in carrying out grant programs with specific reference to their compliance with statutory and administrative requirements. Accordingly, FTA will perform procurement system reviews as part of its on-going oversight responsibility. FTA may recommend "best practices" in order to assist the grantee in improving its procurement practices. In such cases, FTA will identify such recommendations as "advisory."

d. FTA Procurement Technical Assistance. FTA provides procurement training and technical assistance at both regional and national levels by offering various instructional courses, by conducting regional technical assistance conferences, by providing assistance by a contractor on an as-needed basis, and by updating and revising the FTA "Best Practices Procurement Manual." The manual contains procurement guidance and "best practices" that grantees may choose to follow in performing their procurement functions.

e. Contract Clauses and Provisions. The Master Agreement, issued annually, lists many but not all FTA and other crosscutting Federal requirements applicable to FTA grantees. Many of these requirements are related to grantee procurements. Further guidance and suggested wording for contract clauses and provisions is provided in the "Best Practices Procurement Manual."

f. Use of GSA Schedules is restricted to those transit properties with specific legislative authority to use them.

6. DEFINITIONS. All definitions in 49 U.S.C. §5302 are applicable to this circular. The following definitions are provided:

a. "Grantee" means the public or private entity to which a grant or cooperative agreement is awarded by FTA. The grantee is the entire legal entity even if only a particular component of the entity is designated in the assistance award document.

For the purposes of this circular, "grantee" also includes any subgrantee of the grantee. Furthermore, a grantee is responsible for assuring that its subgrantees comply with the requirements and standards of this circular, and that subgrantees are aware of requirements imposed upon them by Federal statutes and regulations.

b. "State" means any of the several states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or any agency or instrumentality of a State exclusive of local governments. "State" does not include any public and Indian housing agency under the United States Housing Act of 1937.

c. "FTA" refers to the Federal Transit Administration.

- d. "Third party contract" refers to any purchase order or contract awarded by a grantee to a vendor or contractor using Federal financial assistance awarded by FTA.
- e. "Piggybacking" is an assignment of existing contract rights to purchase supplies, equipment, or services.
- f. "Tag-on" is defined as the addition of work (supplies, equipment or services) that is beyond the scope of the original contract that amounts to a cardinal change as generally interpreted in Federal practice by the various Boards of Contract Appeals. "In scope" changes are not tag-ons.
- g. "Best Value" is a selection process in which proposals contain both price and qualitative components, and award is based upon a combination of price and qualitative considerations. Qualitative considerations may include technical design, technical approach, quality of proposed personnel, and/or management plan. The award selection is based upon consideration of a combination of technical and price factors to determine {or derive} the offer deemed most advantageous and of the greatest value to the procuring agency.
- h. Design-Bid-Build. The project delivery approach where the grantee commissions an architect or engineer to prepare drawings and specifications under a design services contract, and separately contracts for at-risk construction, by engaging the services of a contractor through sealed bidding or competitive negotiations.
- i. Design-Build. A system of contracting under which one entity performs both architectural/engineering and construction under one contract.

7. GENERAL PROCUREMENT STANDARDS APPLICABLE TO THIRD-PARTY PROCUREMENTS.

- a. Conformance with State and Local Law. Grantees and subgrantees shall use their own procurement procedures that reflect applicable State and local laws and regulations, provided that the procurements conform to applicable Federal law, including the requirements and standards identified in this circular. If there is no State law on a particular aspect of procurement, then Federal contract law principles will apply.
- b. Contract Administration System. Grantees shall maintain a contract administration system that ensures that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.
- c. Written Standards of Conduct. Grantees shall maintain a written code of standards of conduct governing the performance of their employees engaged in the award and administration of contracts. No employee, officer, agent, immediate family member, or Board member of the grantee shall participate in the selection, award, or administration of a contract supported by FTA funds if a conflict of interest, real or apparent, would be involved.

Such a conflict would arise when any of the following has a financial or other interest in the firm selected for award:

- (1) The employee, officer, agent, or Board member,
- (2) Any member of his/her immediate family,

(3) His or her partner, or

(4) An organization that employs, or is about to employ, any of the above.

The grantee's officers, employees, agents, or Board members will neither solicit nor accept gifts, gratuities, favors, or anything of monetary value from contractors, potential contractors, or parties to subagreements. Grantees may set minimum rules when the financial interest is not substantial or the gift is an unsolicited item of nominal intrinsic value. To the extent permitted by state or local law or regulations, such standards of conduct will provide for penalties, sanctions, or other disciplinary action for violation of such standards by the grantee's officers, employees, or agents, or by contractors or their agents.

d. Ensuring Most Efficient and Economic Purchase. Grantee procedures shall provide for a review of proposed procurements to avoid purchase of unnecessary or duplicative items. Consideration should be given to consolidating or breaking out procurements to obtain a more economical purchase.

Where appropriate, an analysis will be made of lease versus purchase alternatives and any other appropriate analysis to determine the most economical approach.

e. Intergovernmental Procurement Agreements.

(1) Grantees are encouraged to utilize available state and local intergovernmental agreements for procurement or use of common goods and services. When obtaining goods or services in this manner, grantees must ensure all federal requirements, required clauses, and certifications (including Buy America) are properly followed and included, whether in the master intergovernmental contract or in the grantee's purchase document.

(2) Grantees are also encouraged to jointly procure goods and services with other grantees. When obtaining goods or services in this manner, grantees must ensure all federal requirements, required clauses, and certifications are properly followed and included in the resulting joint solicitation and contract documents.

(3) Grantees may assign contractual rights to purchase goods and services to other grantees if the original contract contains appropriate assignability provisions. Grantees who obtain these contractual rights (commonly known as 'piggybacking') may exercise them after first determining the contract price remains fair and reasonable.

f. Use of Excess Or Surplus Federal Property. Grantees are encouraged to use Federal excess and surplus property in lieu of purchasing new equipment and property, whenever such use is feasible and reduces project costs.

g. Use of Value Engineering in Construction Contracts. Grantees are encouraged to use value engineering clauses in contracts for construction projects. FTA cannot approve a New Starts grant application for final design funding or a full funding grant agreement until value engineering is complete (see FTA Circular 5010.1C).

h. Awards to Responsible Contractors. Grantees shall make awards only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration shall be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.

i. Written Record of Procurement History. Grantees shall maintain records detailing the history of each procurement. At a minimum, these records shall include:

- (1) the rationale for the method of procurement,
- (2) selection of contract type,
- (3) reasons for contractor selection or rejection, and
- (4) the basis for the contract price.

j. Use of Time and Materials Type Contracts. Grantees will use time and material type contracts only:

- (1) After a determination that no other type of contract is suitable; and
- (2) If the contract specifies a ceiling price that the contractor shall not exceed except at its own risk.

k. Responsibility for Settlement of Contract Issues/Disputes. Grantees alone will be responsible in accordance with good administrative practice and sound business judgment for the settlement of all contractual and administrative issues arising out of procurements. These issues include, but are not limited to, source evaluation, protests, disputes, and claims. These standards do not relieve the grantee of any contractual responsibility under its contracts.

FTA will not substitute its judgment for that of the grantee or subgrantee, unless the matter is primarily a Federal concern. Violations of the law will be referred to the local, State, or Federal authority having proper jurisdiction.

l. Written Protest Procedures. Grantees shall have written protest procedures to handle and resolve disputes relating to their procurements and shall in all instances disclose information regarding protests to FTA. All protest decisions must be in writing. A protester must exhaust all administrative remedies with the grantee before pursuing a protest with FTA.

Reviews of protests by FTA will be limited to:

- (1) a grantee's failure to have or follow its protest procedures, or its failure to review a complaint or protest; or
- (2) violations of Federal law or regulation.

An appeal to FTA must be received by the cognizant FTA regional or Headquarters Office within five (5) working days of the date the protester learned or should have learned of an adverse decision by the grantee or other basis of appeal to FTA.

m. Contract Term Limitation. Grantees shall not enter into any contract for rolling stock or replacement parts with a period of performance exceeding five (5) years inclusive of options. All other types of contracts (supply, service, leases of real property, revenue and construction, etcetera) should be based on sound business judgment. Grantees are expected to be judicious in establishing and extending contract terms no longer than minimally necessary to accomplish the purpose of the contract. Additional factors to be considered include competition, pricing, fairness

and public perception. Once a contract has been awarded, an extension of the contract term length that amounts to an out of scope change will require a sole source justification

n. Revenue Contracts. Revenue contracts are those third party contracts whose primary purpose is to either generate revenues in connection with a transit related activity, or to create business opportunities utilizing an FTA funded asset. FTA requires these contracts to be awarded utilizing competitive selection procedures and principles. The extent of and type of competition required is within the discretionary judgment of the grantee.

o. Tag-ons. The use of tag-ons is prohibited and applies to the original buyer as well as to others as defined in paragraph 6f.

p. Piggybacking. Piggybacking is permissible when the solicitation document and resultant contract contain an assignability clause that provides for the assignment of all or a portion of the specified deliverables as originally advertised, competed, evaluated, and awarded. If the supplies were solicited, competed and awarded through the use of an indefinite-delivery-indefinite-quantity (IDIQ) contract, then both the solicitation and contract award must contain both a minimum and maximum quantity that represent the reasonably foreseeable needs of the party(s) to the solicitation and contract. If two or more parties jointly solicit and award an IDIQ contract, then there must be a total minimum and maximum.

q. E-Commerce. E-Commerce is an allowable means to conduct procurements. If a grantee chooses to utilize E-Commerce, written procedures need to be developed and in place prior to solicitation and all requirements for full and open competition must be met in accordance with this circular.

8. COMPETITION.

a. Full and Open Competition. All procurement transactions will be conducted in a manner providing full and open competition. Some situations considered to be restrictive of competition include, but are not limited to:

- (1) Unreasonable requirements placed on firms in order for them to qualify to do business;
- (2) Unnecessary experience and excessive bonding requirements;
- (3) Noncompetitive pricing practices between firms or between affiliated companies;
- (4) Noncompetitive awards to any person or firm on retainer contracts;
- (5) Organizational conflicts of interest. An organizational conflict of interest means that because of other activities, relationships, or contracts, a contractor is unable, or potentially unable, to render impartial assistance or advice to the grantee; a contractor's objectivity in performing the contract work is or might be otherwise impaired; or a contractor has an unfair competitive advantage;
- (6) Specifying only a "brand name" product instead of allowing "an equal" product to be offered without listing its' salient characteristics.

Grantees may define the salient characteristics in language similar to the following:

- (a) 'Original Equipment Manufacturer (OEM) part #123 or approved equal that

complies with the original equipment manufacturer's requirements or specifications and will not compromise any OEM warranties'; or

(b) 'Original Equipment Manufacturer part #123 or approved equal that is appropriate for use with and fits properly in [describe the bus, engine, or other component the part must be compatible with] and will not compromise any OEM warranties'; and

(c) Any arbitrary action in the procurement process.

b. Prohibition Against Geographic Preferences. Grantees shall conduct procurements in a manner that prohibits the use of statutorily or administratively imposed in-State or local geographical preferences in the evaluation of bids or proposals, except in those cases where applicable Federal statutes expressly mandate or encourage geographic preference. This does not preempt State licensing laws. However, geographic location may be a selection criterion in procurements for architectural and engineering (A&E) services provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.

c. Written Procurement Selection Procedures. Grantees shall have written selection procedures for procurement transactions. All solicitations shall:

(1) Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description shall not, in competitive procurements, contain features that unduly restrict competition. The description may include a statement of the qualitative nature of the material, product, or service to be procured and when necessary, shall set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use.

Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description shall not, in competitive procurements, contain features which unduly restrict competition. The description may include a statement of the qualitative nature of the material, product or service to be procured, and when necessary, shall set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. Detailed product specifications should be avoided if at all possible. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a "brand name or equal" description may be used as a means to define the performance or other salient characteristics of a procurement. The specific features of the named brand which must be met by offerors shall be clearly stated.

(2) Identify all requirements that offerors must fulfill and all other factors to be used in evaluating bids or proposals.

d. Prequalification Criteria. Grantees shall ensure that all lists of prequalified persons, firms, or products that are used in acquiring goods and services are current and include enough qualified sources to ensure maximum full and open competition. Also, grantees shall not preclude potential bidders from qualifying during the solicitation period, which is from the issuance of the solicitation to its closing date.

9. METHODS OF PROCUREMENT. The following methods of procurement may be used as appropriate:

a. Procurement by Micro-Purchases. Micro-purchases are those purchases under \$2,500. Purchases below that threshold may be made without obtaining competitive

quotations. Such purchases are exempt from Buy America requirements. There should be equitable distribution among qualified suppliers and no splitting of procurements to avoid competition. The Davis-Bacon Act applies to construction contracts between \$2,000 and \$2,500. Minimum documentation is required: A determination that the price is fair and reasonable and how this determination was derived. The other requirements of paragraph 7(i) do not apply to micro-purchases.

b. Procurement by Small Purchase Procedures. Small purchase procedures are those relatively simple and informal procurement methods for securing services, supplies, or other property that cost more than \$2,500 but do not cost more than the simplified acquisition threshold fixed at 41 U.S.C. § 403(11) (currently set at \$100,000). If small purchase procedures are used, price or rate quotations shall be obtained from an adequate number of qualified sources.

c. Procurement By Sealed Bids/Invitation For Bid (IFB). Bids are publicly solicited and a firm-fixed-price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming to all the material terms and conditions of the invitation for bids, is the lowest in price.

(1) In order for sealed bidding to be feasible, the following conditions should be present:

(a) A complete, adequate, and realistic specification or purchase description is available;

(b) Two or more responsible bidders are willing and able to compete effectively for the business;

(c) The procurement lends itself to a firm fixed price contract and the selection of the successful bidder can be made principally on the basis of price; and

(d) No discussion with bidders is needed.

(2) If this procurement method is used, the following requirements apply:

(a) The invitation for bids will be publicly advertised and bids shall be solicited from an adequate number of known suppliers, providing them sufficient time to prepare bids prior to the date set for opening the bids;

(b) The invitation for bids, which will include any specifications and pertinent attachments, shall define the items or services sought in order for the bidder to properly respond;

(c) All bids will be publicly opened at the time and place prescribed in the invitation for bids;

(d) A firm fixed-price contract award will be made in writing to the lowest responsive and responsible bidder. When specified in bidding documents, factors such as discounts, transportation costs, and life cycle costs shall be considered in determining which bid is lowest;

Payment discounts will only be used to determine the low bid when prior experience indicates that such discounts are usually taken advantage of; and

(e) Any or all bids may be rejected if there is a sound documented business reason.

(3) The sealed bid method is the preferred method for procuring construction if the conditions in paragraph 9c(1) above apply.

d. Procurement By Competitive Proposal/Request for Proposals (RFP). The competitive proposal method of procurement is normally conducted with more than one source submitting an offer, i.e., proposal. Either a fixed price or cost reimbursement type contract is awarded. This method of procurement is generally used when conditions are not appropriate for the use of sealed bids. If this procurement method is used the following requirements apply:

- (1) Requests for proposals will be publicized. All evaluation factors will be identified along with their relative importance;
- (2) Proposals will be solicited from an adequate number of qualified sources;
- (3) Grantees will have a method in place for conducting technical evaluations of the proposals received and for selecting awardees;
- (4) Awards will be made to the responsible firm whose proposal is most advantageous to the grantee's program with price and other factors considered; and
- (5) In determining which proposals is most advantageous, grantees may award (if consistent with State law) to the proposer whose proposals offer the greatest business value to the Agency based upon an analysis of a tradeoff of qualitative technical factors and price/cost to derive which proposal represents the "best value" to the Procuring Agency as defined in Section 6, Definitions. If the grantee elects to use the best value selection method as the basis for award, however, the solicitation must contain language which establishes that an award will be made on a "best value" basis.

e. Procurement Of Architectural and Engineering Services (A&E). Grantees shall use qualifications-based competitive proposal procedures (i.e., Brooks Act procedures) when contracting for A&E services as defined in 40 U.S.C. §541 and 49 U.S.C. §5325(d). Services subject to this requirement are program management, construction management, feasibility studies, preliminary engineering, design, architectural, engineering, surveying, mapping, and related services.

Qualifications-based competitive proposal procedures require that:

- (1) An offeror's qualifications be evaluated;
- (2) Price be excluded as an evaluation factor;
- (3) Negotiations be conducted with only the most qualified offeror; and
- (4) Failing agreement on price, negotiations with the next most qualified offeror be conducted until a contract award can be made to the most qualified offeror whose price is fair and reasonable to the grantee.

These qualifications-based competitive proposal procedures can only be used for the procurement of the services listed above. This method of procurement cannot be used to obtain other types of services even though a firm that provides A&E services is also a potential source to perform other types of services.

These requirements apply except to the extent the grantee's State adopts or has

adopted by statute a formal procedure for the procurement of these services.

f. Procurement of Design-Bid-Build. Grantees may procure design-bid-build services through means of sealed bidding or competitive negotiations. These services must be procured in a manner that conforms to applicable state and local law, the requirements of this Circular relative to the method of procurement used and all other applicable federal requirements.

g. Procurement of Design-Build. Grantees must procure design-build services through means of qualifications-based competitive proposal procedures based on the Brooks Act as set forth in Section 9e when the preponderance of the work to be performed is considered to be for architectural and engineering (A&E) services as defined in Section 9e. Qualifications-based competitive proposal procedures should not be used to procure design-build services when the preponderance of the work to be performed is not of an A&E nature as defined in Section 9e, unless required by State law.

h. Procurement By Noncompetitive Proposals (Sole Source). Sole Source procurements are accomplished through solicitation of a proposal from only one source, or after solicitation of a number of sources, competition is determined inadequate. A contract change that is not within the scope of the original contract is considered a sole source procurement that must comply with this subparagraph.

(1) Procurement by noncompetitive proposals may be used only when the award of a contract is infeasible under small purchase procedures, sealed bids, or competitive proposals and at least one of the following circumstances applies:

(a) The item is available only from a single source;

(b) The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation;

(c) FTA authorizes noncompetitive negotiations—e.g., if FTA provides a joint procurement grant or a research project grant with a particular firm or combination of firms, the grant agreement is the sole source approval;

(d) After solicitation of a number of sources, competition is determined inadequate;
or

(e) The item is an associated capital maintenance item as defined in 49 U.S.C. §5307 (a)(1) that is procured directly from the original manufacturer or supplier of the item to be replaced. The grantee must first certify in writing to FTA:

1 that such manufacturer or supplier is the only source for such item; and

2 that the price of such item is no higher than the price paid for such item by like customers.

(2) A cost analysis, i.e., verifying the proposed cost data, the projections of the data, and the evaluation of the specific elements of costs and profit, is required.

i. Options. Grantees may include options in contracts. An option is a unilateral right in a contract by which, for a specified time, a grantee may elect to purchase additional equipment, supplies, or services called for by the contract, or may elect to extend the term of the contract. If a grantee chooses to use options, the requirements below apply:

(1) Evaluation of Options. The option quantities or periods contained in the contractor's bid or offer must be evaluated in order to determine contract award. When options have not been evaluated as part of the award, the exercise of such options will be considered a sole source procurement.

(2) Exercise of Options.

(a) A grantee must ensure that the exercise of an option is in accordance with the terms and conditions of the option stated in the initial contract awarded.

(b) An option may not be exercised unless the grantee has determined that the option price is better than prices available in the market or that the option is the more advantageous offer at the time the option is exercised.

10. CONTRACT COST AND PRICE ANALYSIS FOR EVERY PROCUREMENT

ACTION. Grantees must perform a cost or price analysis in connection with every procurement action, including contract modifications. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, grantees must make independent estimates before receiving bids or proposals.

a. Cost Analysis. A cost analysis must be performed when the offeror is required to submit the elements (i.e., labor hours, overhead, materials, etc.) of the estimated cost, (e.g., under professional consulting and architectural and engineering services contracts, etc.).

A cost analysis will be necessary when adequate price competition is lacking and for sole source procurements, including contract modifications or change orders, unless price reasonableness can be established on the basis of a catalog or market price of a commercial product sold in substantial quantities to the general public or on the basis of prices set by law or regulation.

b. Price Analysis. A price analysis may be used in all other instances to determine the reasonableness of the proposed contract price.

c. Profit. Grantees will negotiate profit as a separate element of the price for each contract in which there is no price competition and in all cases where cost analysis is performed. To establish a fair and reasonable profit, consideration will be given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work.

d. Federal Cost Principles. Costs or prices based on estimated costs for contracts under grants will be allowable only to the extent that costs incurred or cost estimates included in negotiated prices are consistent with Federal cost principles. Grantees may reference their own cost principles that comply with applicable Federal cost principles.

e. Cost Plus Percentage of Cost Prohibited. The cost plus a percentage of cost and percentage of construction cost methods of contracting shall not be used.

11. BONDING REQUIREMENTS. For those construction or facility improvement contracts or subcontracts exceeding \$100,000, FTA may accept the bonding policy and requirements of the grantee, provided FTA determined that the policy and requirements adequately protect the Federal interest. FTA has determined that

grantee policies and requirements that meet the following minimum criteria adequately protect the Federal interest

- a. A bid guarantee from each bidder equivalent to five (5) percent of the bid price. The "bid guarantee" shall consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of his bid, execute such contractual documents as may be required within the time specified;
- b. A performance bond on the part of the contractor for 100 percent of the contract price. A "performance bond" is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract; and
- c. A payment bond on the part of the contractor. A payment bond is one executed in connection with a contract to assure payment, as required by law, of all persons supplying labor and material in the execution of the work provided for in the contract. Payment bond amounts determined to adequately protect the federal interest are as follows:
 - (1) Fifty percent of the contract price if the contract price is not more than \$1 million;
 - (2) Forty percent of the contract price if the contract price is more than \$1 million but not more than \$5 million; or
 - (3) Two and a half million dollars if the contract price is more than \$5 million.
- d. A Grantee may seek FTA approval of its bonding policy and requirements if they do not comply with these criteria.

12. PAYMENT PROVISIONS IN THIRD PARTY CONTRACTS.

- a. Advance Payments. FTA does not authorize and will not participate in funding payments to a contractor prior to the incurrence of costs by the contractor unless prior written concurrence is obtained from FTA. There is no prohibition on a grant recipient's use of local match funds for advance payments. However, advance payments made with local funds before a grant has been awarded, or before the issuance of a letter of no prejudice or other pre-award authority, are ineligible for reimbursement.
- b. Progress Payments. Grantees may use progress payments provided the following requirements are followed:
 - (1) Progress payments are only made to the contractor for costs incurred in the performance of the contract.
 - (2) The grantee must obtain adequate security for progress payments. Adequate security may include taking title, letter of credit or equivalent means to protect the grantee's interest in the progress payment.

13. LIQUIDATED DAMAGES PROVISIONS. A grantee may use liquidated damages if it may reasonably expect to suffer damages and the extent or amount of such damages would be difficult or impossible to determine.

The assessment for damages shall be at a specific rate per day for each day of overrun in contract time; and the rate must be specified in the third party contract. Any liquidated damages recovered shall be credited to the project account involved

unless the FTA permits otherwise.

14. CONTRACT AWARD ANNOUNCEMENT. If a grantee announces contract awards with respect to any procurement for goods and services (including construction services) having an aggregate value of \$500,000 or more, the grantee shall:

- a. Specify the amount of Federal funds that will be used to finance the acquisition in any announcement of the contract award for such goods or services; and
- b. Express the said amount as a percentage of the total costs of the planned acquisition.

15. CONTRACT PROVISIONS. All contracts shall include provisions to define a sound and complete agreement. In addition, contracts and subcontracts shall contain contractual provisions or conditions that allow for:

- a. Administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, including sanctions and penalties as may be appropriate. (All contracts in excess of the small purchase threshold.)
- b. Termination for cause and for convenience by the grantee or subgrantee including the manner by which it will be effected and the basis for settlement. (All contracts in excess of \$10,000.)

16. STATUTORY AND REGULATORY REQUIREMENTS. A current but not all inclusive and comprehensive list of statutory and regulatory requirements applicable to grantee procurements (such as Davis-Bacon Act, Disadvantaged Business Enterprise, Clean Air, and Buy America) is contained in the FTA Master Agreement. Grantees are responsible for evaluating these requirements for relevance and applicability to each procurement. For example, procurements involving the purchase of iron, steel and manufactured goods will be subject to the "Buy America" requirements in 49 C.F.R.

Part 661. Further guidance concerning these requirements and suggested wording for contract clauses may be found in FTA's Best Practices Procurement Manual.

For specific guidance concerning the crosscutting requirements of other Federal agencies, grantees are advised to contact those agencies.

Sincerely,

Jennifer L. Dorn
Administrator

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Los Angeles County Chief Administrative Office

Grant Management Statement for Grants \$100,000 or More

Department: Public Works		
Grant Project Title and Description: South Whittier Shuttle Expansion		
<p>Currently, the South Whittier Shuttle serves the unincorporated area of South Whittier. The route is approximately 12 miles long. The shuttle has stops at the Whittwood Town Center, Presbyterian Hospital, and Sorensen Park in the Los Nietos area, enabling residents to travel to training and employment locations. The grant will fund 50 percent of the shuttle service expansion. The expansion will include four additional hours of operations on weekdays and two hours on Saturdays. The expanded service hours will be Monday through Friday from 6 a.m. to 8 p.m. and from 8 a.m. to 6 p.m. on Saturdays.</p>		
Funding Agency	Program (Fed. Grant #/State Bill or Code #)	Grant Acceptance Deadline
MTA	Job Access and Reverse Commute	N/A*
Total Amount of Grant Funding: \$208,770		County Match: \$208,770**
Grant Period: Up to 2 years based on FTA expenditure deadline, currently set at September 2007.	Begin Date: Upon Board acceptance and expanded service hour implementation	End Date: September 2007 or as amended by the Federal Transit Administration
Number of Personnel Hired Under This Grant:	Full Time: 0	Part Time: 0
Obligations Imposed on the County When the Grant Expires		
Will all personnel hired for this program be informed this is a grant-funded program? N/A	Yes___	No___
Will all personnel hired for this program be placed on temporary ("N") items? N/A	Yes___	No___
Is the County obligated to continue this program after the grant expires?	Yes___	No <u>x</u>
If the County is not obligated to continue this program after the grant expires, the Department will:		
a.) Absorb the program cost without reducing other services:	Yes <u>X</u>	No___
b.) Identify other revenue sources (describe below): If the shuttle service shows sufficient demand to continue operating the expanded schedule after the grant expires, Public Works will utilize funding from Proposition A Local Return Transit Program available in the Transit Enterprise Fund to continue the expanded service upon direction from the First and Fourth Supervisorial Districts.	Yes <u>x</u>	No___
c.) Eliminate or reduce, as appropriate, positions/program costs funded by the grant:	Yes___	No <u>x</u>
Impact of additional personnel on existing space:		
N/A		
Other requirements not mentioned above: *No deadline given by Metro; however, Agreement needs to be executed ASAP due to current end date of 9/07.		
**Hard costs: \$190,000, Soft costs: \$18,770		

Department Head Signature _____ Date: _____